

**DALAM MAHKAMAH PERSEKUTUAN MALAYSIA
(BIDANGKUASA RAYUAN)
RAYUAN JENAYAH NO. 05-45-2005 (W) DAN SATU LAGI**

ANTARA

PENDAKWA RAYA

... PERAYU

DAN

LETCHUMANAN A/L SUPPIAH

... RESPONDEN

**[Dalam Mahkamah Rayuan Malaysia
Rayuan Jenayah No. W-05-26-2000**

ANTARA

Pendakwa raya

... Perayu

DAN

Letchumanan a/l Suppiah

... Responden]

Coram: Alauddin bin Dato' Mohd. Sheriff, PCA
Hashim bin Dato' Hj Yusoff. , FCJ
Zulkefli bin Ahmad Makinudin, FCJ

JUDGMENT OF ZULKEFLI BIN AHMAD MAKINUDIN, FCJ

I have read the judgment in draft of my learned brother Hashim Bin Dato' Hj. Yusoff, FCJ and I agree with the decision that the preliminary objection of the Public Prosecutor be allowed and that of the preliminary objection of the accused be dismissed and his appeal be struck out. I would like to add in and state my views on a pertinent issue arising from these two preliminary objections as follows:

A question that needs to be answered at this stage is whether the accused can in the course of the appeal by the Public Prosecutor before this Court against the decision of the Court of Appeal in calling for his defence of possession and not trafficking of the said drugs challenge that decision through the back door by submitting in the course of his reply to the prosecution's appeal that he should have been acquitted. I would answer this question in the negative. The simple reason is that what the law has precluded the accused from appealing must be given full effect. To allow otherwise would mean providing the accused with an avenue of appeal at this stage contrary to what the law has prohibited. Section 92 of the Courts of Judicature Act 1964 ["CJA"] gives the Federal Court a very wide power when it hears an appeal. However, that power can only be exercised subject to section 87 of the CJA, that is the appeal must be competent before the court. On this point we have to relate back to the meaning of the word "*decision*". The word "*any*" before the word "*decision*" in section 87 of the CJA must be confined to a decision which is final.

Therefore, even if the record of appeal is before the court, the law precludes the court from going into the merits favouring the accused at this stage. A matter of convenience cannot override a substantive prohibition. It is to be noted that the accused is in no way deprived of the two tiers of appeal provided under the CJA as it is still open to him to appeal after the conclusion of the trial by the trial court. This stand is in line with the decision of the Federal Court in **Sia Cheng Soon & Anor. v. Tengku Ismail bin Tengku Ibrahim [2008] 5 CLJ 201** wherein **Arifin Zakaria, FCJ** [as he then was] in deciding whether the High Court ought to interfere by way of a revision on a decision of the lower court made pending a trial had this to say:

*“In my view, in **Tan Sri Eric Chia**’s case, even the High Court ought not to have interfered in the proceeding pending before the Sessions Court by calling for a revision. What more in the case of the Federal Court. In a matter such as this, since the decision on the admissibility of evidence was made in a pending case the proper course is to allow the case to proceed to its end and for the issue to be canvassed during the appeal stage.*

*To allow a revision of the decision made by the Subordinate Court in a pending matter as in **Tan Sri Eric Chia**’s case could lead to delay in the disposal of cases in the Subordinate Courts.”*

The Federal Court in **Sia Cheng Soon**'s case has made it clear that the appellate court should not interfere on a matter which has not been finally disposed off, a matter which is still pending before the trial court even if the matter has come up before the appellate court.

My learned brothers Alauddin bin Dato' Mohd. Sheriff, PCA and Hashim bin Dato' Hj. Yusoff, FCJ, have seen this judgment in draft and have expressed their concurrence.

(DATO' ZULKEFLI BIN AHMAD MAKINUDIN)
Judge
Federal Court

Dated: 9th July 2009.

Counsel for the Appellant:

Puan Nuruhuda Nur'aini Bt. Mohd. Noor
Timbalan Pendakwa Raya
Jabatan Peguam Negara

Counsel for the Respondent:

Mr. Collin Sequerah and Encik Amer Hamzah Arshad

Solicitors for the Respondent:

Messrs. Zain & Co.